

# FISCAL NOTE

**Bill #:** HB0475

**Title:** Local consent required to close roads on state land

**Primary Sponsor:** Maedje, R

**Status:** As Introduced

Sponsor signature	Date	Chuck Swysgood, Budget Director	Date
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## Fiscal Summary

	<b><u>FY 2004 Difference</u></b>	<b><u>FY 2005 Difference</u></b>
<b>Expenditures:</b>		
State Special Revenue	\$358,678	\$358,678
<b>Revenue:</b>		
State Special Revenue	\$90,750	\$90,750
Other Trust Revenue	(\$90,750)	(\$90,750)
<b>Net Impact on General Fund Balance:</b>	\$0	\$0

- |   |   |
|---|---|
| <input type="checkbox"/> Significant Local Gov. Impact    | <input checked="" type="checkbox"/> Technical Concerns            |
| <input type="checkbox"/> Included in the Executive Budget | <input checked="" type="checkbox"/> Significant Long-Term Impacts |
| <input type="checkbox"/> Dedicated Revenue Form Attached  | <input checked="" type="checkbox"/> Needs to be included in HB 2  |

## Fiscal Analysis

### ASSUMPTIONS:

#### **Judiciary**

1. This legislation requires any state agency proposing to restrict land or stream access to obtain local government consent.
2. Section 8 prescribes procedures to be followed when it is determined that an agency has not obtained the appropriate consent. Prescribed procedures allow residents in an affected county to file a mandamus action in District Court to enforce the consent requirements.
3. The Judicial Branch assumes that all state agencies affected by this legislation will follow the requirements set forth in this legislation. Therefore, the number of cases filed in District Court will be insignificant.
4. Each District Court judge maintains a docket of cases awaiting action in court. Hearings related to mandamus actions may require judges to change their dockets, but no additional costs will be incurred. This bill has no fiscal impact to the Judicial Branch.

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**Department of Natural Resources and Conservation**

5. The Department of Natural Resources and Conservation will process approximately 50 new and historic county road rights-of-way applications annually, assuming counties will make application for historic rights of way prior to the sunset date of October 1, 2006, pursuant to 77-1-130, MCA.
6. The average right-of-way area will be 3.63 acres (30 feet x 1 mile long) and acquisition cost will average \$500 per acre statewide. Based on these assumptions, the typical cost of a county road easement one mile in length will be \$1,815 (\$500 x 3.63 acres). Therefore, annually the sale of easements for county roads will generate approximately \$90,750 (\$1,815 x 50) for the various trust funds.
7. Additional spending authority will be required under the trust land administration account to reimburse the counties for rights-of-way. Section 9 of this bill provides for the reimbursement of easement revenues for county roads across state land from the trust land administration account (fund 02938).
8. On average, 63 percent of revenue generated from county road easements impact the common school trust fund.

**Department of Fish, Wildlife and Parks**

9. HB 475 will require additional public involvement above and beyond what the department currently does and the phrase “activities that impact private land” means any administrative action taken by the department that impacts the physical nature of the private property.
10. The department issues over 400 stream permits and 70 restoration projects each year.
11. The department annually is involved with 35 wetland, 47 pheasant and 285 upland game bird projects.
12. Each project/permit will require an additional ten hours for preparation, discussion, meeting attendance and coordination and \$50 in operations (travel).
13. This will require an additional 4.10 FTE fishery/wildlife biologists ( $837 \times 10 = 8370/2000 = 4.1$ ) and \$41,850. (Entry level for a fish/wildlife biologist is \$14,244 and benefits are 28 %)
14. The department conducts 20 fee title, conservation easements and right-of-way purchases or agreements annually. Each project will require an additional 80 hours and \$500 in travel to provide information to the conservation district and attend local public hearing. This will require 0.80 FTE ( $(80 \times 20)/2000$ ) and \$10,000 in operations.
15. The department is involved is 15 recommendations to Federal Land Management Agencies on road management travel plans each year. Each plan will require an additional 80 hours and \$500 in travel to obtain conservation district approval. This will require 0.60 FTE ( $(15 \times 80)/2000$ ) and \$7,500 in operations.
16. The department will have expenditures in the Fisheries Division (Program 03) of \$110,724, Wildlife Division (Program 05) of \$86,612 and Field Services Division (Program 02) of \$70,593 each year of the 2005 biennium.

**FISCAL IMPACT:**

	FY 2004 <u>Difference</u>	FY 2005 <u>Difference</u>
<b>DNRC (Program 35)</b>		
<u>Expenditures:</u>		
Operating Expenses	\$90,750	\$90,750
<u>Funding of Expenditures:</u>		
State Special Revenue (02)	\$90,750	\$90,750
<u>Revenues:</u>		
State Special Revenue (02)	\$90,750	\$90,750
Other (09) Trust Revenue	(\$90,750)	(\$90,750)

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	FY 2004 <u>Difference</u>	FY 2005 <u>Difference</u>
<b>Department of WP (03, 05, 02)</b>		
FTE	5.50	5.50
<u>Expenditures:</u>		
Personal Services	\$208,578	\$208,578
Operating Expenses	<u>59,350</u>	<u>59,350</u>
TOTAL	\$267,928	\$267,928
<u>Funding of Expenditures:</u>		
State Special Revenue (02)	\$267,928	\$267,928
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>		
<b>Department of Natural Resources and Conservation</b>		
Other (09) Trust Revenue	(\$90,750)	(\$90,750)
<b>Department of Fish, Wildlife and Parks</b>		
State Special Revenue (02)	(\$267,928)	(\$267,928)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Assuming \$90,750 is generated from an average of 20 counties for county road rights-of-way, approximately \$4,537 ( $\$90,750 \div 20$ ) would be available to the individual counties to fund local public schools, pursuant to Section 9 of this bill.

LONG-RANGE IMPACTS:

The DNRC administers lands designated to nine individual trusts. Revenues derived from easements are deposited to the respective permanent trusts. Approximately \$90,750 not utilized for trust land administration would be diverted from all the trust beneficiaries' permanent funds, not just common schools. On average, 63 percent of revenue generated from county road easements impact the common school trust fund. The remaining 37 percent of revenue generated is deposited to the remaining eight trust funds. Therefore, the eight additional trusts would not be compensated for the easements that cross those specific trust lands.

TECHNICAL NOTES:

1. The proposed legislation would grant authority and power to entities other than the State Board of Land Commissioners to direct conveyances of interests and management responsibilities in state trust lands. As written, the proposed legislation may violate Article X, Section 4 of the Montana Constitution which grants this authority only to the State Board of Land Commissioners.
2. In Montrust v. State of Montana, ex rel. Board of Land Commissioners, 296 Mont. 402, 989 P.2d 800 (1999), the Montana Supreme Court cited private trust law authority in striking down a number of statutes which violated the state's duty of undivided loyalty to the beneficiaries and which prevented the institutional trust beneficiaries from deriving the full benefit of revenue from trust lands. Portions of 77-1-106, MCA, were then struck down by the District Court in the Montrust case, precisely because the Legislature had directed the State Board of Land Commissioners to sell certain easements at 1972 land values. The Court held that the statute directly offended the state's constitutional and fiduciary duty to obtain the full market value for such easements.